FILED FEBRUARY 19, 2009

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of **RICARDO CORTEZ SARIA** **Member No. 74999** A Member of the State Bar.	)	Case No.: **06-O-12725-PEM** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

I. Introduction and Pertinent Procedural History

This default matter was submitted for decision on November 24, 2008. At the time of submission, the State Bar of California ("State Bar") was represented in this matter by Deputy Trial Counsel Maria Oropeza. Respondent Ricardo Cortez Saria ("respondent") participated in these proceedings only through the first day of trial.

The State Bar filed a Notice of Disciplinary Charges ("NDC") against respondent on April 2, 2008. A copy of the NDC was properly served on respondent on April 1, 2008. On April 28, 2008, respondent filed a response to the NDC.

Respondent represented himself and participated in all court proceedings leading up to trial. On October 28, 2008, respondent and the State Bar filed a Stipulation as to Facts and Admission of Documents. The trial commenced that same day and was expected to last four days, October 28, 29, 30, and 31, 2008.

However, on the second day of trial, October 29, 2008, the court received a facsimile from respondent's sister-in-law, LaDonna Saria. The facsimile, in part, stated:

> "As Rick Saria's sister-in-law, I am advising you that Rick is resigning from the practice of law and will not be attending the proceedings scheduled today in your court.
>
> It was a pleasure meeting you although the circumstances were unpleasant. I hope that you will accept my family's apology to you and I trust that you will convey apologies to all witnesses who have been inconvenienced."

Therefore, on October 30, 2008, the court filed an order of entry of default and involuntary inactive enrollment.[1] A copy of said order was properly served on respondent at his membership records address. This copy was not subsequently returned to the court by the U.S. Postal Service as undeliverable or for any other reason.

The State Bar presented the balance of its testimonial evidence by way of declaration. On November 24, 2008, the State Bar filed its closing brief and the matter was submitted for decision that same day.

II. Findings of Fact

A. Jurisdiction

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)[2]

Respondent was admitted to the practice of law in California on June 28, 1977, and has been a member of the State Bar of California at all times since that date.

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[1]Respondent's involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (e) was effective three days after the service of this order by mail.

[2] Pursuant to the parties' Stipulation as to Facts and Admission of Documents, State Bar Exhibits 1-33 and respondent's exhibits B-G, I-M, O and S have been admitted into evidence.

B. The Moran Matters [Case No. 06-O-12725]

At all times mentioned herein, the company RCMI Associates ("RCMI") was a web-based "headhunter" service, matching up prospective employers and employees in the high tech (computer) industry. RCMI depended upon a web page to conduct their business. The President of RCMI was Roderick "Rick" Iverson ("Iverson").

On or about January 2003, William Moran ("Moran") had a contract/unpaid wages dispute with his employer, RCMI. Moran developed a website for RCMI and believed that RCMI owed him about $6,000 for his services, including preparing a database system. RCMI claimed that the database program was still broken.

Respondent, Iverson, and Moran all knew each other socially. Iverson was engaged to an attorney, Haley Sneiderman ("Sneiderman"). On or about January 16, 2003, Moran contacted Sneiderman directly to discuss the dispute between himself and RCMI. Moran and Sneiderman discussed "walking away" from the dispute; in that Moran would not receive any additional monies, and RCMI would not initiate any litigation regarding the database system.

On or about January 17, 2003,[3] respondent called Sneiderman and represented himself as "personal friends" of both Moran and Iverson. Again, Sneiderman recommended that both parties walk away from the dispute, and that RCMI believed the database was broken or non-operational. Respondent told Sneiderman he agreed with her assessment and that the matter was "too small for him to become involved with" and that he would talk to Moran.

[3] The NDC, in its general background section, erroneously and repeatedly identifies the year 2003 as "2008." The court finds that these mistakes are clear typographical errors and not prejudicial to respondent.

On or about January 17, 2003, respondent and Moran discussed the dispute with RCMI. Respondent advised Moran to turn off RCMI's website and email system. Respondent told Moran that he had no financial responsibility towards RCMI. Based upon this advice from respondent, Moran shut down, or caused to be shut down, the RCMI website, email accounts, and access to the internet, preventing RCMI from conducting business.

After becoming aware of the shutdown of the web page, Sneiderman contacted Moran and told him his conduct was illegal, and that if he did not return the property immediately that RCMI would be forced to take legal action.

On or about January 2003, Moran engaged respondent to represent Moran on a contingency fee basis, for 40% of any recovery, related to the above disputes. There was no written fee agreement.

On or about January 20, 2003, respondent telephoned Sneiderman and advised that he represented Moran. Respondent demanded payment from RCMI and refused to return any of RCMI's (computer database) property.

RCMI v. Moran

On or about January 27, 2003, RCMI, represented by Sneiderman, filed suit against Moran, entitled *RCMI Associates v. William Moran*, Case No. BC289236, in the Los Angeles County Superior Court ("*RCMI v. Moran*"). In the complaint, RCMI alleged that Moran, without RCMI's authorization, and by improperly posing as RCMI, changed the contact information with the domain server, Yahoo, and thereafter changed the domain server to Verisign, Inc., and changed all account contact information and passwords to Moran, personally. In effect, RCMI alleged that Moran hijacked the web page and made it unavailable to RCMI, which was a web-based business. RCMI sought

injunctive relief and alleged breach of contract, conversion of the domain name, interference with economic relations, fraud, misappropriation of trade secrets, and breach of fiduciary duty.

On or about March 25, 2003, RCMI served Moran with a copy of the complaint. Moran promptly provided respondent with a copy of the complaint. On or about April 16, 2003, Sneiderman sent respondent a courtesy letter advising him of her intent to file for default. Respondent failed to answer the complaint.

On or about May 1, 2003, RCMI filed a Request for Default against Moran. Both respondent and his client, Moran, were served with a copy of the Request for Default on or about April 17, 2003. On or about June 23, 2003, respondent filed a Motion to Vacate Default.

On or about July 25, 2003, the court vacated the default and issued attorneys' fees and costs against "defendant and his counsel" in the sum of $3,000, "payable forthwith." These fees and costs were to compensate Sneiderman for the services and fees incurred in obtaining the default and preparation of the Judgment by Declaration. The court served respondent with a notice of the ruling on the same date, to 706 Cowper Street, Palo Alto, California, 94301.

Respondent received the copy of the ruling and was aware of its contents, but failed to pay the $3,000 costs and attorneys' fees forthwith. Respondent did not report to the State Bar that the court had ordered that he and his client pay $3,000 in attorneys' fees and costs. Respondent advised Moran that the costs and fees were against himself, and not Moran.

Between April 2003 and June 2003, Moran made repeated requests of respondent as to the status of his case, by telephoning respondent at his office. Respondent advised

Moran of the default but told Moran that allowing the matter to go into default was a "legitimate legal strategy."

On or about August 2003, respondent advised Moran that the court had set aside the default. Respondent failed to advise Moran that he, Moran, was jointly liable for the $3,000 in attorneys' fees and costs assessed for the default.

On or about September 30, 2003, Moran terminated respondent's services and hired attorney Joseph Costa ("Costa"). Costa substituted in to the *RCMI v. Moran* suit on or about September 30, 2003. Costa advised Moran of the $3,000 in attorneys' fees and costs. On or about December 2003, Costa negotiated a settlement on behalf of Moran and RCMI dismissed its suit. Moran paid the $3,000 in attorneys' fees and costs.

Moran v. Sneiderman

In or about January 2003, respondent advised Moran to file a lawsuit against Sneiderman personally. Respondent advised that such a suit would force Sneiderman to withdraw and RCMI to settle. Moran followed respondent's advice and agreed to a suit. On or about February 3, 2003, respondent filed suit against Sneiderman, entitled *William Moran v. Hayley Sneiderman, Esq., and Creim, Macias & Koenig, Roderick Iverson, RCMI Associates, et al*, Case No. CV814469, filed in the Santa Clara County Superior Court ("*Moran v. Sneiderman*"). In his suit, Moran claimed that Sneiderman caused intentional infliction of emotional distress and negligent infliction of emotional distress, by threatening to have Moran arrested if he did not acquiesce to her demands regarding her client and fiancée, Roderick Iverson.

On or about February 20, 2003, Sneiderman sent respondent a letter stating that the complaint against her was deficient on procedural and substantive grounds. Sneiderman referenced privilege under Civil Code section 47(b) (litigation privilege).

Sneiderman also advised that the venue was wrong and the service defective. Respondent received the letter and was aware of its contents. On April 9, 2003, Sneiderman's law firm, Creim, Macias & Koenig, LLP, also sent respondent a letter indicating that the suit lacked merit and that the communication was privileged, and the service was defective. Respondent failed to respond to these letters or otherwise discuss his cause of action with Sneiderman.

On or about March 3, 2003, Sneiderman filed a Motion to Change Venue. She served respondent with a copy of her motion. In her motion, she asked for sanctions pursuant to California Code of Civil Procedure, section 396b. Respondent received the Motion to Change Venue and was aware of its contents. Respondent failed to file a timely opposition to the Motion to Change Venue. On the day after it was due, respondent provided a one sentence opposition, stating that the motion was moot because he was adding two other defendants to the action.

On or about April 14, 2003, the court granted the Motion to Change Venue and awarded $3,647.80 in sanctions pursuant to California Code of Civil Procedure, section 396(b). California Code of Civil Procedure section 396b, subdivision (b) states, in part, as follows:

> "In its discretion, the court may order the payment to the prevailing party of reasonable expenses and attorney's fees incurred in making or resisting the motion to transfer whether or not that party is otherwise entitled to recover his or her costs of action. In determining whether that order for expenses and fees shall be made, the court shall take into consideration (1) whether an offer to stipulate to change of venue was reasonably made and rejected, and (2) whether the motion or selection of venue was made in good faith given the facts and law the party making the motion or selecting the venue knew or should have known. As between the party and his or her attorney, those expenses and fees *shall* be the personal liability of the attorney not chargeable to the party. Sanctions shall not be imposed pursuant to this subdivision except on notice contained in a party's papers or on the court's own noticed motion, and after opportunity to be heard." (Emphasis added.)

Therefore, the court's handwritten notation on the written order, "$3,647.80 to be paid by [plaintiff] within 20 days" was an order against respondent directly. The court also ordered the plaintiff to pay the costs of transfer of the case to the new venue.

On or about April 16, 2003, Sneiderman's law firm served respondent with a copy of the order transferring the matter to Los Angeles County and for imposition of costs. Respondent received the notice and was aware of its contents.

Respondent failed to transfer the case to Los Angeles by failing to pay, or cause to be paid, the transfer fees. Respondent failed to pay, or cause to be paid, the court ordered sanctions for the venue motion. Respondent also failed to report the $3,647.80 in sanctions to the State Bar.

On or about May 23, 2003, Sneiderman filed a Motion for Terminating Sanctions against respondent for his failure to pay the sanctions of $3,647.80 and his failure to transfer the case to Los Angeles. She obtained a hearing date of July 3, 2003. On or about June 20, 2003, a week before the hearing date for further sanctions, respondent transferred the venue to Los Angeles.[4]

On or about July 11, 2003, Sneiderman filed a Motion to Strike Plaintiff's First Amended Complaint. On or about July 14, 2003, Sneiderman also filed a Motion for the Court to Order Plaintiff's Counsel in Contempt of Court and For Further Monetary Sanctions for Plaintiff's Counsel Failure to Pay Sanctions that the Court Imposed Against Him Personally on April 15, 2003. In her pleadings, Sneiderman stated that respondent was ordered to personally pay the $3,647.80 in sanctions. Sneiderman served respondent

[4] The case was re-captioned *William Moran v. Hayley Sneiderman, Esq., and Creim, Macias & Koenig, Roderick Iverson, RCMI Associates, et al*, Los Angeles County Superior Court Case No. BC298569.

with this motion. Respondent received this motion, was aware of its contents, and failed to file an opposition to this motion.

On or about August 7, 2003, respondent and Sneiderman appeared in Los Angeles and argued the motion. Respondent advised Moran that he was going to Los Angeles in August, 2003 for a "routine status conference." Respondent did not advise Moran of the sanctions order of $3,647.80 for the failure to change venue.

The court granted the Motion to Strike the First Amended Complaint. The court found that respondent failed to comply with the $3,647.80 sanction order and that respondent failed to comply with the order to transfer the case to Los Angeles. The court held that the litigation privilege applied to Sneiderman's statements to Moran, protected by California Code of Civil Procedure section 425.16(b) (Anti-SLAPP actions). The court further found that, even if Sneiderman violated a Rule of Professional Conduct, that, in and of itself, did not give rise to a cause of action against her.[5] The court found that threatening criminal action for shutting down a website was protected conduct.

Respondent's causes of action in *Moran v. Sneiderman* were baseless and without merit. Respondent encouraged the commencement and the continuance of this action in order to force Sneiderman to conflict out of and/or to gain an unjust advantage in the *RCMI v. Moran* litigation.

In addition to granting the Motion to Strike the First Amended Complaint, the court in the *Moran v. Sneiderman* matter ordered sanctions of $8,485.30 against Moran to be paid within 20 days. Respondent was present in court and received notice of, and was

[5] Respondent claimed that when Sneiderman contacted Moran directly on or about January 17, 2003, after the web page was shut down, that she violated rule 2-100 of the Rules of Professional Conduct.

aware of, both the court order striking the First Amended Complaint and the $8,485.30 sanction order.

Respondent failed to advise Moran of the $8,485.30 sanction order. Respondent also failed to advise Moran that the court had dismissed the amended complaint against Sneiderman.

After the August 7, 2003 trip to Los Angeles, respondent advised Moran that the trips had become costly, and he was going to start billing Moran at an hourly rate. Respondent sent Moran a bill for $800.

On or about September 30, 2003, Moran terminated respondent's services and hired Costa. Costa substituted in to the *Moran v. Sneiderman* suit on or about September 30, 2003. Costa notified Moran of the various sanctions orders in the *Moran v. Sneiderman* matter. Moran subsequently paid these sanctions.

Past Dealings with Iverson

On or about 1999, respondent represented Iverson as a client in a legal matter involving Outpost.com and respondent's then employer, Techsearch. Iverson paid respondent $1,000 for his legal services. Respondent also had a social relationship with Iverson.

Iverson, as president of RCMI, would be substantially affected by the resolution of the *RCMI v. Moran* litigation. Iverson, as Sneiderman's fiancé, and also, because respondent sought to add him as a named defendant, would also be substantially affected by the *Moran v. Sneiderman* litigation.

Respondent knew that Iverson would be substantially affected by the aforementioned litigation. Respondent failed to provide, in writing, notice to Moran of his prior legal and personal relationship with Iverson.

III. Conclusions of Law

A. Count 1: Rules of Professional Conduct of the State Bar of California, Rule 3-110(A)[6] [Failure to Perform with Competence]

Rule 3-110(A) provides that a member must not intentionally, recklessly or repeatedly fail to perform legal services with competence.

Respondent intentionally and recklessly failed to perform legal services with competence, in willful violation of rule 3-110(A), by failing to timely file a response to the complaint in *RCMI v. Moran*, resulting in the entry of Moran's default and the assessment of $3,000 in costs and fees against respondent and Moran.

B. Count 2: Business and Professions Code, Section 6068, Subdivision (o)(3)[7] [Failure to Report Judicial Sanctions]

Section 6068, subdivision (o)(3), provides that it is the duty of an attorney to report the imposition of judicial sanctions against the attorney to the State Bar, in writing, within 30 days of the time the attorney has knowledge of the imposition of the sanctions.

The evidence before the court, however, fails to establish, by clear and convincing evidence, that respondent was ordered to pay $3,000 in sanctions relating to the *RCMI v. Moran* matter. While respondent was ordered to pay $3,000 in attorneys' fees and costs, said award was not labeled or identified as a judicial sanction. Therefore, Count Two is dismissed with prejudice.

C. Count 3: Section 6103 [Failure to Obey a Court Order]

Section 6103 provides that "[a] wilful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath

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[6] All further references to rule(s) are to the current Rules of Professional Conduct of the State Bar of California, unless otherwise stated.

[7] All further references to section(s) are to the Business and Professions Code, unless otherwise stated.

taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension."

The court finds, by clear and convincing evidence, that respondent willfully violated section 6103 by failing to pay the court ordered attorneys' fees and costs of $3,000 in the *RCMI v. Moran* matter forthwith, as assessed and ordered by the court on July 25, 2003.

D. Count 4: Section 6068, Subdivision (m) [Failure to Communicate]

Section 6068, subdivision (m), provides that it is the duty of an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By failing to advise Moran of the $3,000 in costs and attorneys' fees against him, respondent failed to keep his client reasonably informed of significant developments in a matter in which he agreed to provide legal services, in willful violation of section 6068, subdivision (m).

E. Count 5: Section 6103 [Failure to Obey a Court Order]

The court finds, by clear and convincing evidence, that respondent willfully violated section 6103 by failing, in the matter of *Moran v. Sneiderman*, to pay the court ordered sanctions of $3,647.80, as assessed and ordered by the court on April 14, 2003.

F. Count 6: Section 6068, Subdivision (o)(3) [Failure to Report Judicial Sanctions]

By failing to report the $3,647.80 sanction order in the matter of *Moran v. Sneiderman* to the State Bar within 30 days after learning of said order, respondent willfully violated section 6068, subdivision (o)(3).

G. Count 7: Rule 3-110(A) [Failure to Perform with Competence]

By bringing a baseless, unfounded cause of action; bringing his cause of action in the wrong venue; failing to promptly transfer the case after being ordered to do so; and failing to respond to Sneiderman's motion for further sanctions; respondent intentionally, recklessly, and repeatedly failed to perform with competence in the *Moran v. Sneiderman* matter, in willful violation of rule 3-110(A).

H. Count 8: Section 6068, Subdivision (m) [Failure to Communicate]

By failing to advise Moran of the sanctions for the error in venue, by failing to advise Moran of the motion to strike the complaint and the dismissal of the complaint, and by failing to notify Moran of the additional $8,485.30 in sanctions against Moran, respondent failed to keep his client apprised of significant developments in the *Moran v. Sneiderman* matter in willful violation of Business and Professions Code, section 6068, subdivision (m).

I. Count 9: Section 6068, Subdivision (g) [Encouraging an Unjust Action]

Section 6068, subdivision (g), provides that it is the duty of an attorney not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest. By encouraging the commencement and continuance of *Moran v. Sneiderman*, for the corrupt motive or interest of gaining leverage in *RCMI v. Moran*, respondent violated Business and Professions Code, section 6068, subdivision (g).

J. Count 10: Section 6068, Subdivision (c) [Maintaining an Unjust Action]

Section 6068, subdivision (c), provides that it is the duty of an attorney to counsel or maintain those actions, proceedings, or defenses only as to appear to him or her legal or just, except the defense of a person charged with a public offense. By maintaining the meritless

Moran v. Sneiderman action, respondent failed to counsel and maintain such actions, proceedings, or defenses only as appear to him legal or just, in willful violation of Business and Professions Code, section 6068, subdivision (c). However, because Count 10 involves basically the same conduct reflected in Count 9, the court affords Count 10 only nominal weight.

K. Count 11: Rule 3-310(B)(3) [Conflict]

Rule 3-310(B)(3) provides that a member must not accept or continue representation of a client without providing written disclosure to the client when the member has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter. By failing to notify Moran, in writing, of his prior legal and personal relationship with Iverson, when respondent knew that Iverson would be substantially affected by the litigation of *RCMI v. Moran* and *Moran v. Sneiderman*, respondent willfully violated Rules of Professional Conduct, rule 3-310(B)(3).

IV. Mitigating and Aggravating Circumstances

A. Mitigation

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)[8] The court does not find any mitigating factors.

B. Aggravation

The present matter involves several aggravating factors. (Std. 1.2(b).)

[8]All further references to standard(s) are to this source.

1. Prior Record of Discipline

Respondent's prior record of discipline includes five previous impositions of discipline. (Std. 1.2(b)(i).)

On August 17, 1983, the California Supreme Court issued an order (4377) suspending respondent from the practice of law for five years, stayed, with a five-year probationary period including a two-year actual suspension. This discipline resulted from respondent's plea of nolo contendere to two criminal counts of section 2101 of the California Unemployment Insurance Code.[9] Between February 19, 1979 and September 6, 1979, respondent applied for and received unemployment insurance benefits in the total sum of $2,704. On May 16, 1979, however, respondent became employed. Consequently, respondent collected $1,456 in unearned benefits. In mitigation, respondent (1) had no prior record of discipline; (2) was suffering from extreme depression and financial hardship; (3) made restitution to the government; and (4) demonstrated candor and cooperation with the State Bar. No aggravating factors were identified.

On July 28, 1993, the California Supreme Court issued an order (S032916) suspending respondent from the practice of law for one year, stayed, with a two-year probationary period, and an actual suspension of 30 days. This discipline centered on respondent's representation of the defendant in a civil action. Respondent violated section 6068, subdivision (c), by improperly filing a cross-complaint in the civil action against the plaintiff and his client's landlord. Neither of these cross-defendants was related to the substance of the litigation. Additionally, respondent commingled personal

[9] This section involves the willful and unlawful making of a false statement or representation or knowingly failing to disclose a material fact, for the purpose of obtaining a benefit or payment, to wit, unemployment compensation.

funds in his client trust account. In mitigation, respondent had a mistaken, but honest, belief that the personal funds should have been held in trust. In aggravation, respondent had a prior record of discipline.

On October 4, 1995, the California Supreme Court issued an order (S048011) suspending respondent from the practice of law for one year, stayed, with a two-year period of probation. This discipline was imposed as a result of respondent's practicing law during his period of action suspension in Supreme Court Case No. S032916. In aggravation, respondent had two prior records of discipline. In mitigation, respondent displayed candor and cooperation with the State Bar.

Pursuant to an order filed in the State Bar Court on September 25, 1996, respondent was publicly reproved with conditions in State Bar Court Case No. 94-O-13692 for failing to use his client's funds for their intended purpose in violation of rule 4-100(B)(4). In aggravation, respondent had a prior record of discipline. In mitigation, respondent's misconduct did not result in any harm to his client, and he displayed candor and cooperation with the State Bar.

On September 13, 2006, the California Supreme Court issued an order (S145018) suspending respondent from the practice of law for two years, stayed, with a four-year probation including a three-year actual suspension. In this matter, respondent failed to account, failed to report a judicial sanction, failed to comply with a court order, and willfully misappropriated $17,000. In aggravation, respondent demonstrated indifference toward rectification and had a prior record of discipline. In mitigation, respondent displayed candor and cooperation with the State Bar.

2. Harm to the Administration of Justice

Respondent's misconduct resulted in significant harm to the administration of justice. (Std. 1.2(b)(iv).)

3. Multiple Acts of Misconduct

Respondent was found culpable of ten acts of misconduct. Multiple acts of misconduct constitute an aggravating factor. (Std. 1.2(b)(ii).)

4. Respondent's Failure to Participate

Respondent's failure to appear at trial and participate in these proceedings is a significant aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed must be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standards 2.4(b), 2.6, and 2.10 each apply in this matter. Out of these, the most severe sanction is found with standard 2.6 which recommends suspension or disbarment (depending on the gravity of the offense or the harm to the victim) for culpability of a member of a violation of Business and Professions Code section 6068.

Due to respondent's prior record of discipline, standard 1.7(b) is also applicable. In fact, standard 1.7(b) is central to the court's analysis in this case. Standard 1.7(b) provides that, if a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline, the degree of discipline in the current proceeding must be disbarment unless the most compelling mitigating circumstances clearly predominate.

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) The standards are not mandatory; they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

The Supreme Court and Review Department have not historically applied standard 1.7(b) in a rigid fashion. Instead, the courts have weighed the individual facts of each case, including whether or not the instant misconduct represents a repetition of offenses for which the attorney has previously been disciplined. (*In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966, 977.) When such repetition has been found, the courts have typically found disbarment to be the appropriate sanction. (See *Morgan v. State Bar* (1990) 51 Cal.3d 598, 607; *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 841; *In the Matter of Thomson*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 977.)

Here, respondent's present misconduct echoes much of the misconduct that resulted in his five prior impositions of discipline. Respondent has previously been

disciplined for maintaining an unjust action, failing to comply with court orders, and failing to report judicial sanctions.

The imposition of discipline in five prior matters has apparently had no effect on respondent's conduct. Respondent continues to violate the rules for which he has previously been disciplined. Additionally, his failure to appear at trial in the present proceeding provides further evidence of his inability or unwillingness to conform his conduct.

Therefore, after weighing the evidence, including the factors in aggravation and the lack of mitigation, the court finds no compelling reason to deviate from standard 1.7(b). The court agrees with the State Bar's recommendation that respondent should be disbarred. The court further agrees with the State Bar's recommendation that respondent be ordered to pay restitution to Moran for (1) the judicial sanctions ordered in the *Moran v. Sneiderman* matter and (2) respondent's share of the court ordered attorneys' fees and costs in the *RCMI v. Moran* matter.

VI. Recommended Discipline

The court recommends that respondent **Ricardo Cortez Saria** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

It is recommended that respondent make restitution to William Moran in the amount of $13,633.10 plus 10% interest per annum from November 1, 2003 (or to the Client Security Fund to the extent of any payment from the fund to William Moran, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnish satisfactory proof thereof to the State Bar's Office of Probation.

Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

The court further recommends that respondent be ordered to comply with California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.[10]

VII. Order of Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California effective three days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 220(c).)

VIII. Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: February _____, 2009

PAT McELROY
Judge of the State Bar Court

[10] Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)